IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

WP(C).No. 6407 of 2007(K)

OS.1/2006 of I ADDL. DISTRICT COURT, KOLLAM

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PETITIONERS:

1. G. VIJAYANATHA KURUP,
   THOTTATHIL VEEDU FROM AYIKARAVALLIL, PAIKUZHY,
   OACHIRA P.O., KOLLAM.

2. DAMODARAN UNNITHAN, AGED 68 YEARS,
   S/O. SANKARA PILLAI, MALAYIKADATHINAL THEKKETHIL,
   ULAVAKAD MURI, NOORANADU P.O., MAVELIKKARA.

BY ADV. SRI.K.P.SREEKUMAR
SRI.R.GIREESH VARMA

RESPONDENTS:

1. OACHIRA PARABRAHMA TEMPLE,
   REPRESENTED BY ITS SECRETARY.

2. K. BHARGAVAN, S/O.KRISHNAN,
   SECRETARY, OACHIRA PARABRAHMA TEMPLE, RESIDING AT
   MUTTATHU PRAYAR THEKKU, ALUMPEEDIKA P.O.

3. AARAMBIL SUKUMARAN UNNITHAN,
   AGED 65 YEARS, S/O.NEELAKANTAN UNNITHAN,
   PRESIDENT OF -DO-, RESIDING AT MANGALATHU
   VALLIKUNNAM, VALLIKUNNAM P.O.

4. O. KRISHNA PILLAI, AGED 60 YEARS,
   S/O. UMMINI PILLAI, VICE PRESIDENT OF -DO-,
   RESIDIG AT KARIMUTTATHU, KATTACHIRA,PALLICHIRA P.O

5. V. SUNIL KUMAR, AGED 51 YEARS,
   TREASURER OF -DO-, EDATHURUTHEL, ALAPPAD,
   CHERIYAZHEEKKAL P.O.

6. BHASKARA KURUP, AGED 76 YEARS,
   S/O. RAGHAVA KURUP, EXECUTIVE COMMITTEE MEMBER,
   -DO-, PANAMPLAVIL, THEKKU KOCHUMURI, OACHIRA P.O.

7. RAMACHANDRAN PILLAI, AGED 70 YEARS,
   EXECUTIVE COMMITTEE MEMBER OF -DO-, MAVOORIL,
   VARAVILA, VARAVILA P.O.

8. V. SADASIVAN, AGED 57 YEARS,
S/O. VASUKUTTY, EXECUTIVE COMMITTEE MEMBER OF -DO-
KIDASSERIL PUTHEN VEEDU, PRAYAR NORTH P.O.

9. S. MADHAVAN PILLAI, AGED 72 YEARS,
EXECUTIVE COMMITTEE MEMBER OF -DO-, MENEZHUTHU,
VAYANAKATHU, NJAKKANAL P.O.

10. DR.SIVARAMAKRISHNA PILLAI, M.D. OF -DO-
OACHIRA PARABRAHMA SPECIALITY HOSPITAL &
RESEARCH CENTRE, OACHIRA.

11. OACHIRA PARABRAHMA SPECILITY HOSPITAL,
OACHIRA, REPRESENTED BY ITS CHAIRMAN.

12. N.R.RAJENDRAN,
NADASSERIL HOUSE, THEKKUKOCHUMURI, OACHIRA.

13. S. JAYAPRAKASH,
KALARIKKAL, KADATHOOR, K.S. PURAM P.O.

14. C. HARISANKAR,
PADANILATHU, THEKKUKOCHUMURI, OACHIRA.

15. PUSHPADASAN,
CHAITHANYA, CHERVALLY, KAYAMKULAM.

16. ASOK KUMAR,
CHITHAYAM, MADATHIL KARAZHMA P.O.

17. BIMAL DANI,
MALAKKADATHU HOUSE, SAYIKKADU, AZHEEKKAL P.O.

18. S.SASIDHARAN PILLAI,
KANNADIYIL, MEMANA, OACHIRA P.O.

19. V.VIJAYAN PILLAI,
KANICHERIL HUOSE, PERUMANTHAZHA, VARAVILA P.O.

20. M.C. SURESH,
LEKSHMI THOPPIL HOUSE, SRAYIKKADU, AZHEEKKAL P.O.

*21. GOPALAKRISHNA PILLAI,
S/O. PARAMESWARAN PILLAI,
ASAN PURAYIDATHIL, PAYIKUZHI KARA,
OACHIRA VILLAGE.

22. SIVADASAN, S/O. PADMANABHAN,
KUTTITHARAYIL, KRISHNAPURAM P.O.,
KRISHNAPURAM VILLAGE.

23. PRABHAKARAN, S/O. KRISHNAN,
PUTHUKKATTU VEEDU,
PAYIKUZHI KARA,
OACHIRA VILLAGE.

24. AJAYAGHOSH, S/O. V.RAMACHANDRAN,
'CHALLOOR VADAKATHIL', PRAYAR SOUTH,
ALUMPEEDIKA P.O., OACHIRA - 690 547.

*25.SIVA PRASAD, S/O. KUNJU PILLAI,
'VISHAKAM', THEKKUKOCHU MURI KARA,
OACHIRA P.O., KRISHNAPURAM.

BY ADV. SRI.N.D.PREMACHANDRAN R1- R11
SRI.D.AJITHKUMAR
SMT.A.K.SAJITHA
SRI.P.N.RAVINDRAN
SMT.PREETHY KARUNAKARAN
SMT.MEENA.A.
SMT.M.R.MINI
SRI.JAYKAR.K.S.
SRI.M.S.UNNIKRISHNAN R12 - 18

* RESPONDENTS 21 TO 25 ARE IMPLEADED AS PER ORDER DATED 22.3.2007 IN I.A. 396/2007.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

W.P. © NO.6407/2007

PETITIONERS EXHIBITS:

EXHIBIT.P1: TRUE COPY OF THE PLAINT IN O.S. 1 OF 2006 ON THE FILE OF THE 1ST ADDITIONAL DISTRICT COURT, QUILON.

EXHIBIT.P2: TRUE COPY OF I.A. NO.1371 OF 2006 IN O.S. NO. 1 OF 2006

EXHIBIT.P3: TRUE COPY OF THE COUNTER TO EXT.P2, FILED THE SECRETARY OF THE BHARANA SAMITHY

EXHIBIT.P4: TRUE COPY OF THE JUDGMENT DATED 18.1.2007 IN W.P. 2049 OF 2007

EXHIBIT.P5: TRUE COPY OF THE JUDGMENT DATED 18.1.2007 IN W.P. 2049 OF 2007

EXHIBIT.P6: TRUE COPY OF THE ORDER IN I.A. 1371 OF 2006 DATED 6-2-2007

EXHIBIT.P7: TRUE COPY OF THE APPLICATION I.A. 259 OF 2007

EXHIBIT.P8: TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN C.M.A. 137 OF 1985 DATED 3.12.1987

ANNEXURE A: TRUE COPY OF THE ORDER DATED 15.2.2007 PASSED BY THE COURT OF THE 1ST ADDITIONAL DISTRICT JUDGE OF KOLLAM IN O.S. NO.1 OF 2006.

EXHIBIT.P9: TRUE COPY OF THE I.A. 1413 OF 2005

EXHIBIT.P10: TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY BHARANA SAMITHI IN I.A. 1413 OF 2005

RESPONDENTS EXHIBITS:

EXHIBIT-R1(a): COPY OF THE NOTICE PUBLISHED IN KERALA KAUMUDI DATED 8.5.2005

EXHIBIT-R1(b): COPY OF THE NOTICE PUBLISHED IN KERALA KAUMUDI DAILY DATED 14.9.2005

EXHIBIT-R1(c): COPY OF THE KERALA KAUMUDI DAILY DATED 12.11.2005

EXHIBIT.R1(d): COPY OF THE ORDER PASSED BY THE DISTRICT COURT, KOLLAM DATED 15.2.2007 IN O.S. NO.1/2006

EXHIBIT.R1(e): COPY OF THE JUDGMENT IN W.P (C) NO.28331 OF 2006.

/TRUE COPY/

P.A. TO JUDGE

K.P. Balachandran, J.

W.P.(C)No. 6407 of 2007

Dated this the 10th day of April, 2007

JUDGMENT

Petitioners are defendants 12 and 13 in O.S.1/2006 on the file of the District Court, Kollam. The suit is instituted for framing a scheme for the management and administration of the Oachira Parabrahma Temple at Oachira. The District Judge vide Ext.P6 order on Ext.P2 application filed by the petitioners has directed election of new office bearers to the Managing Committee of the temple being conducted as the term of office bearers was already over. It is observed in Ext.P6 order that all the parties including defendants 1 to 5 and 11 are willing to conduct election. The counsel for the petitioners submits that the prayer in Ext.P2 was not to have an election conducted but to remove the 2nd defendant and other office bearers and to make an interim arrangement for the administration and taking income of the temple and its assets under the supervision of this court. The petitioners cannot expect the prayer made by him to be

accepted by the court as such and orders being issued.

2. It is seen from Ext.P6 that the counsel for the defendants conceded in open court for conducting election. It was therefore that the District Judge allowed Ext.P2 application only to the extent of holding election in the temple. It is contended by the counsel for the petitioner that the counsel for defendants 12 and 13 had not given any such consent. The counsel appearing for the petitioners is admittedly not the counsel who was appearing in the court below. Ext.P7 affidavit and petition filed by the 12th defendant in the court below shows that there was consent from the part of the defendants 12 and 13 as well to have the election conducted as the averment in the affidavit shows that the prayer for adjournment was made on 15.2.2007 as some more time was required to file a panel of retired judicial officers in compliance with Ext.P6 order. This means that Ext.P6 order was passed on consent to have an election conducted.

3. Pursuant to the appointment of the Returning Officer and Asst. Returning Officers it is pointed out by the counsel for

the respondents that court below has vide order dated 24.2.2007 given specific directions in the matter of conduct of election on the returning officer asking for guidance in the matter. The directions are contained in Clauses A to J in the order dated 24.2.2007. After carefully going through the said directions, the counsel for the petitioners take objection only to Clause-F, wherein, the court below has directed that the Secretary of the temple will arrange conveyance facilities for the officers according to their requirement for carrying the work. As rightly urged by the counsel for the petitioners, I am also of opinion that the Returning Officer or the Assistant Returning Officers shall not be directed to make request to the Secretary of the temple to have conveyance facilities arranged for them according to their requirements. Hence, in modification of Clause-F, I direct that the Returning Officer shall be entitled to incur expenses for arranging conveyance facilities for himself and the Asst. Returning Officers and can get the expenses so incurred ratified by the court below by furnishing accounts. It is further made clear that if the Returning Officer and the Asst. Returning

Officers feel that engaging anybody else to assist them would be better in the interest of execution of their work, they can have such independent person engage in lieu of the assistance of staff of the temple directed to be provided for to assist them in their work in connection with the election. With the above modification in the guide lines given by the court below, I confirm Ext.P6 order of the District Judge. Ext.P6 order is not liable to be quashed on any of the grounds urged.

This writ petition, in the circumstances, is disposed of with the above directions.

(K.P.BALACHANDRAN, JUDGE)

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/True copy/

P.A to Judge